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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,757	04/09/2004	Thomas W. Kenny	S03-068	3603
30869	7590	09/20/2005		
LUMEN INTELLECTUAL PROPERTY SERVICES, INC. 2345 YALE STREET, 2ND FLOOR PALO ALTO, CA 94306			EXAMINER KWOK, HELEN C	
			ART UNIT 2856	PAPER NUMBER

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,757

Applicant(s)

KENNY ET AL.

Examiner

Helen C. Kwok

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 18-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/9/04 & 11/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 18-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 25, 2005.

2. Applicant's election with traverse of Group I (Claims 1-17) in the reply filed on July 25, 2005 is acknowledged. The traversal is on the ground(s) that the process can be used to make materially different sensors such as pressure sensors or flow sensors. This is not found persuasive because as indicated in the restriction, the claims have acquired a separate status in the art as shown by their different classification due to that the method claims and the apparatus claims are examined in different areas.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 3-12 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,531,787 (Lesinski et al.).

Lesinski et al. discloses an implantable auditory system with micromachined microsensor comprising, as illustrated in Figures 1A-4A, a sensor head package (i.e. microsensor 28); a base layer 63; a frame 50 connected to and above the base layer; a proof mass 54 within the frame; a flexure 55 connecting the proof mass to the frame such that the flexure including a piezoresistive element 58; a silicon encapsulation layer 62 above the frame, the proof mass and the flexure; and circuitry 30 electrically connected to the piezoresistive element and remotely. (See, column 7, line 51 to column 9, line 56).

With regards to claims 3-8, Lesinski et al. further disclose the microsensor is configured for implantation into a middle ear or ossicular bones. Also, the microsensor includes a barb or a pointed tip 36 with a flexible shaft with a wire 33 running along the shaft to connect the microsensor to the circuitry. (See, column 7, line 50 to column 8, line 22).

With regards to claims 9-10, Lesinski et al. teaches a passivation layer 60 disposed on the piezoresistive element and the flexure. (See, column 9, lines 21-40).

With regards to claims 11-12 and 16-17, Lesinski et al. suggests the proof mass is substantially rectangular and includes bond pad 57 and isolated vertical contact 66,67 within the encapsulation layer and using elements like a resistor, a capacitor or an inductor for the electrical circuit element. (See, column 9, lines 41-67, as observed in Figure 2).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,531,787 (Lesinski et al.) in view of U.S. Patent 6,389,899 (Partridge et al.).

With regards to claims 2 and 13-14, Lesinski et al. does not explicitly teach the dimensions and parameters of the sensor, the gap and the base layer as in the claims. However, to have set such test characteristics is considered to have been a matter of design choice that would have been obvious to an artisan of ordinary skill in the art at the time of invention without departing from the scope of the invention, namely to measure the exterior force being applied to the sensor.

With regards to claim 15, Lesinski et al. does not teach the proof mass includes holes. Partridge et al. discloses a micromachined accelerometer comprising, as illustrated in Figures 17C, a proof mass 36 with holes 128. (See, column 10, lines 19-27). It would have been obvious to a person of ordinary skill in the art at the time of invention to have readily recognize the advantages and desirability of having holes on the proof mass as suggested by Partridge et al. to the apparatus of Lesinski et al. so

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that is the proof mass is more easily etched during fabrication. (See, column 10, lines 19-27).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The reference cited is related to micro-accelerometer having piezoresistive on the flexures.

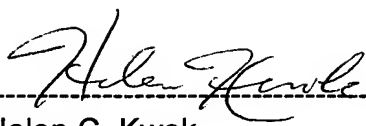
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen C. Kwok whose telephone number is (571) 272-2197. The examiner can normally be reached on 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Helen C. Kwok
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hck
September 16, 2005